



**THE IMPLEMENTATION OF THE DECISION CONSTITUTIONAL  
COURT OF INDONESIA NO. 128/PUU-XIII/2015 ON THE  
ELIMINATION OF DOMICILE REQUIREMENTS  
FOR VILLAGE APPARATUS CANDIDATES IN  
PASAR BATAHAN BATAHAN DISTRICT  
MANDAILING NATAL REGENCY**

**THESIS**

*Submitted to the State Institute for Islamic Studies Padangsidimpuan as a Partial  
Fulfillment of the Requirement for Bachelor of Law (SH)  
In Constitutional Law (Hukum Tata Negara)*

**Written By:**

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THE STATE INSTITUTE FOR ISLAMIC STUDIES  
PADANGSIDIMPUAN**

**2021**



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**THESIS**

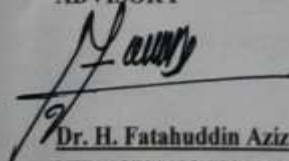
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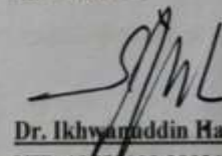
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Attachment : 7 (Seven) Attachments)

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At.  
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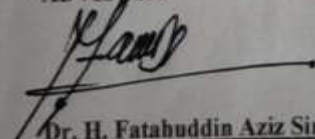
After reading, reviewing and providing suggestions for improvement as necessary to Jannes Pandapotan's Thesis entitled: **"The Implementation Of The Decision Of Constitutional Court Of Indonesia No. 128/PUU-XIII/2015 On The Elimination Of Domicile Requirements For Village Apparatus Candidates In Pasar Batahan Batahan District Mandailing Natal Regency"**, then we declare that this thesis has been accepted to fulfill part of the requirements in obtaining a Bachelor of Law (SH) in the field of Department Of Constitutional Law at the Sharia and Law Faculty at IAIN Padangsidempuan.

For that, in the not too distant future, we hope that the brother can be called to account for his thesis in the Munaqosyah trial.

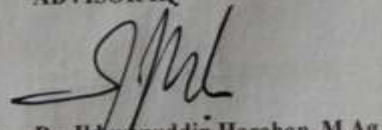
Thus we convey, for the attention and cooperation of the parents, we thank you.

*Wassalamua'laikum Wr.Wb.*

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Written By : Jannes Pandapotan  
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Has been accepted to fulfill one of the tasks  
And requirements in obtaining a  
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Padangsidimpuan, 30 August 2021

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## ABSTRACT

**Name** : Jannes Pandapotan  
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**Title of Thesis** : **The Implementation of the Decision Constitutional Court of Indonesia No. 128/PUU XIII/2015 on the Elimination of Domicile Requirements for Village Apparatus Candidates in Pasar Batahan Batahan District Mandailing Natal Regency.**  
**Year** : 2021

This study discusses the implementation of the decision Constitutional Court of Indonesia No. 128/PUU XIII/2015 on the elimination of domicile requirements for village apparatus candidates in Pasar Batahan Batahan District Mandailing Natal Regency. This research was motivated by a decision of the Constitutional Court that removed the requirement of domicile for village apparatus candidates so village apparatus candidates could register anywhere without any regional restrictions.

This type of research is field research with qualitative descriptive analysis methods. This method of data collection is by interview and documentation in accordance with the provisions in the decision of constitutional court of Indonesia No. 128/PUU-XIII/2015 on the elimination of domicile requirements for village apparatus candidates in Pasar Batahan Batahan District Mandailing Natal Regency. The parties studied were the Head of Batahan District, Head of Pasar Batahan, Secretary of Pasar Batahan, Head of BPD of Pasar Batahan, Indigenous People of Pasar Batahan (*Niniak Mamak*) and community around Pasar Batahan as the voter of the place of implementation of the constitutional court decision related to the elimination of domicile requirements for village apparatus candidates.

The results of the study mentioned that the implementation of the decision constitutional court of Indonesia No. 128/PUU-XIII/2015 on the elimination of domicile requirements for village apparatus candidates in Pasar Batahan Batahan District Mandailing Natal Regency has been implemented this can be seen from the form of implementation that has been applied by the Head Man and District Head, namely by conducting socialization, networking, screening and appointment of village apparatus candidates conducted by the Head Man along with District Head. Then according to the view of Islamic Law has also been appropriate and there is no problem.

**Keys Word** : **Implementation, Constitutional Court of Indonesia No. 128/PUU-XIII/2015 and Village Apparatus**



## ACKNOWLEDGEMENTS

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

Praise Allah glory to Him who has given their time and health and to the author to conduct research and put it in this skripsi. Prayers and greetings to the Prophet Muhammad, who has led his people to the right path.

The thesis entitled **“The Implementation of Constitutional Court of Indonesia Decision No. 128/PUU-XIII/2015 on the Elimination of Domicile Requirements for Village Apparatus Candidates in the Pasar Batahan Village Batahan Sub-District Mandailing Natal District”** was prepared to complete assignments and meet the requirements to achieve a Law degree ( SH ), majoring in Constitutional Law Department, State Institute for Islamic Studies Padangsidempuan (IAIN).

The author is well aware that the writing of this essay still has many shortcomings and is still far from perfect, as well as many obstacles faced by the writer due to limited knowledge. However, thanks to the guidance and advice of the supervisor finally this essay can be completed.

With the completion of this thesis, the writer would like to thank:

1. Mr. Dr. H. Fatahuddin Aziz Siregar, M.Ag as Advisor I and Mr. Dr. Ikhwanuddin Harahap, M.Ag as Advisor II who have guided and directed the author in carrying out research and preparation of this essay.
2. Mr. Prof. Dr. H. Ibrahim Siregar, M.CL. as Rector of IAIN Padangsidempuan, Vice of Rector I for Academic and Institutional Development, Vice of Rector II for General Administration, Planning and

Cooperation, Vice Rector III for Student Affairs and Cooperation and the entire academic community of IAIN Padangsidimpuan.

3. Mr. Dr. Fatahuddin Aziz Siregar, M.Ag. as Dean of the Faculty of Syariah and Law of IAIN Padangsidimpuan.
4. Mrs. Dermina Dalimunthe, M.H as Chair of the Constitutional Law Department, Syariah and Law Faculty IAIN Padangsidimpuan.
5. The head of the library and all IAIN Padangsidimpuan library employees who have assisted in writing in providing books related to the discussion this research.
6. Lecturers / staff in the IAIN Padangsidimpuan environment who provide various knowledge so that they are able to complete this thesis writing.
7. Best friends throughout the 2017 HTN 2 class room class Hasan, Aulia, Radhuha Ekinnaro, Herman, Mikrad, Siddiq, Indra Wandu, Dini, Dani, Lasdianni, Rahmi, Fatmah, Fatma, Aisyah, Nurida, Lasdianni, Nurliani, Lily Yani, Riski Hidayah, Sarah Khairani, Rizka, Midah and Ms. Julfa Rahmi, who always gave many emotional and fun moments also contributed help and motivate the author in completing the final project at the undergraduate level at IAIN Padangsidimpuan.

The most special and deep gratitude :

1. My beloved father Baginda Nazarman (alm) may Allah bless him and my beloved mother Siti Fatimah Hutagalung I love both of them so much who have nurtured, educated, and guided and contributed a lot to writers being

able to get education up to Higher Education as well as those who I really love.

2. I love also motivated the author (Author's brother and Sister: Hendriadi S.Pd, Pijai Saputra and Nova Ayu Kartini who continues to support the education of writers and younge after our father passed away, writers who always hold each other's shoulders in times of trouble and share stories of laughter when happy. Do not forget to my team success, my bestie and my room mate and also my funny classmate, they are very kind to me they are Ramadani S.H, Dini Febriani Tobing S.H, Lasdianni Siregar S.H, Lili Yani Harahap S.H, Ummi Alawiyah Siregar S.H and Mara Panusunan. And fellow thesis writers in the discussion a English who is always a friend to exchange translations and mutual guidance. Finally, by surrendering and asking Allah Subhanahu wata'ala's blessing, the authors hope that this essay will be useful especially for writers, readers and the wider community.
3. Last but not least, I wanna thank me, I wanna thank me for believing in me, I wanna thank me for doing all this hard work, I wanna thank me for having no days off, I wanna thank me for never quitting, for just being me at all times.

Padangsidimpuan, August 2021  
Author,

**JANNES PANDAPOTAN**  
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## GUIDELINES FOR ARABIC-LATIN TRANSLITERATION

### 1. Consonants

Arabic consonants in the Arabic writing system are denoted by letters in this transliteration, some are denoted by letters, some are denoted by a sign and some others are denoted by letters and signs at the same time. The following is a list of Arabic letters and their transliterations with Latin letters.

Arabic	letters Latin letters Latin	Letters	Name
ا	Alif	Not denoted	Not denoted
ب	Ba	B	Be
ت	Ta	T	Te
ث	· a	·	es (with dots above)
ج	Jim	J	Je
ح	ḥa	ḥ	ha (with dots below)
خ	Kha	Kh	kadan ha
د	Dal	De	
ذ	Zai	Z	Zet
ر	Ra	R	Er
ز	Sin	S	Ice
س	shin	Sy	ice and ye
ش	SAD	S	(with a dot below)
ص	Dad	D	de (with a dot below)
ض	ta	t	te (with dot below)
ط	ḏa ḏ	zet	(with dot below)
ظ	'ain	·'	Inverted comma above

ع	Gain	G	Ge
غ	Fa	F	Ef
ف	Qaf	Q	Ki
ق	Kaf	K	Ka
ك	Lam	L	El
ل	Mim	M	Em
م	Nun	N	En
ن	Wau	W	We
و	Ha	H	Ha
ه	Hamzah	.. '..	Apostrophe
ء	Yes	Y	Ye
ي			

## 2. Vowels

Arabic vowels such as Indonesian vowels, consist of a single vowel or monophthong and double vowels or diphthongs.

- a. Vocal Solo is a single vowel Arabic emblem a sign or a vowel transliteration as follows:

Signs	Name	LetterLatin	Name
	Fathah	A	A
	Kasrah	I	I
و	dommah	U	U

- b. Duplicates are double vowel vowel Arabic emblem in the form of a combination of a vowel and letter, transliteration in the form of a combination of letters as follows:

Signs and letters	Name	Combined	Name
.....ي	fathah and yes	Ai	a and i
و.....	fathah and wau	Au	a and u

- c. *Maddah* is a long vowel whose symbol is in the form of vowels and letters, the transliteration is in the form of letters and signs as follows:

Character and Letter	Name	Letter and Signs	Name
.....ا...ى	fathah and alif or yes	-	a and top line
...ى	Kasrah and yes		i and the line under
و...	dommah and wau	-	u and the line above

#### 4. *Ta Marbutah*

There are two transliterations for *Ta Marbutah*.

- The living *Ta Marbutah* is the living *Ta Marbutah* or gets the *harakat fathah, kasrah and dommah*, the transliteration is / t /.
- Ta Marbutah* is dead *Ta Marbutah* which dies or gets breadfruit, the transliteration is / h /. If in a word that ends in *Ta Marbutah* followed by a

word that uses the article al, and the reading of the two words is separate, then *Ta Marbutah* is transliterated as ha (h).

### **5. *Syaddah (Tasydid)***

*Syaddah* or *tasydid* which in the Arabic writing system is denoted by a sign, a sign of *syaddah* or a sign of *tasydid*. In this transliteration the *syaddah* sign is denoted by a letter, which is the same letter as the letter marked the *syaddah*

### **6. Clothing**

Words The article in the Arabic writing system is denoted by letters, namely: ا. However, in transliteration the article is distinguished between the article followed by the *syamsiah* letter and the article followed by the *qamariah* letter. a. An article followed by a *syamsiah* letter is an article followed by a *syamsiah* letter transliterated according to its sound, namely the letter / l / is replaced by the same letter as the letter immediately followed by the article. The article that is followed by the letter *qamariah* is the one that is followed by the letter *qamariah* which is transliterated according to the rules outlined in front and according to the sound.

### **7. *Hamzah***

It is stated in front of the Arabic-Latin Transliteration List that the *hamzah* is transliterated with an apostrophe. However, it lies only in the middle and at the end of the word. If the *hamzah* is put at the beginning of the word, it is not represented, because in Arabic it is alif

## **8. Word Writing**

Basically, every word, whether *fi'il*, *isim*, or letter is written separately. For certain words that are written in Arabic letters which are commonly coupled with other words because there are letters or vowels that are removed, in this transliteration the writing of these words can be done in two ways: words can be separated and can also be chained

## **9. Capital Letters**

Although in the article system the capital letters are followed in Arabic, they are not recognized, in this transliteration they are also used. The use of capital letters as what applies in EYD, including capital letters are used to write the first letter, the name itself and the beginning of the sentence. If that personal name is passed by the article, then what is written in capital letters remains the first letter of the self-name, not the initial letter of the article. The use of the initial capital letter for Allah only applies in Arabic script, it is complete, and if the writing is put together with other words so that there is a letter or vowel that is omitted, the capital letter is not used.

## **10. Tajwid**

For those who want fluency in reading, this transliteration guide is an integral part of the science of recitation. Therefore, the formalization of this transliteration guideline needs to be accompanied by recitation guidelines.

Source: Religious Literature Research and Development Team. *Arabic-Latin Transliteration Guide*. Fifth Print. 2003. Jakarta: Project for the Study and Development of Religious Education Literature.



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#### **ATTACHMENT**

## CHAPTER I INTRODUCTION

### A. Research Background

In etymological, the word of law is *hukum* (Indonesia), *Recht* (Netherlands and German), *Droit* (France), the term *Recht* comes from the Latin *Rectum* means demands or orders or government. *Rectum* in roman is *Rex* which means king or king's order. These terms (*Rech*, *Rectum*, *Rex*) in Roman language became right (right or fair) which also meant law. So that the law can be interpreted by regulations made and passed by the competent official or authority.

A rule of law in Indonesia has many written regulation in the form laws or laws that live in community (civil law) such as unwritten customary laws that regulates every action of its citizens or regulates all legal interests in society for the realization of a life that is just and civilised life. As well as social justice for all Indonesian people. One example of law in Indonesia regulates aspects people's lives: village or *kelurahan*.

The unitary state of the republic of Indonesia recognizes and respects the unity of customary law community and their traditional rights as long as they fulfill 4 (four) requirements, namely: 1) still alive, 2) under the development of society, 3) not contrary the principle of the unitary state of the republic of Indonesia, 4) in accordance with what has been regulated in the Act.<sup>1</sup>

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<sup>1</sup> Law No. 6/2014 on the Village.

In its implementation, the unitary state of the republic of Indonesia recognizes and respects the customary law, and it includes rights in the nomination of village apparatus in general. The positions village apparatus has always been a matter for debate, especially among political elites. The village that has length lower hand of government functions is an interesting topic to debate. The positions village apparatus is expected to be able carry out its functions and objectives properly, especially among the political elite. In essence, the leadership of village head is an important factor in village government. The position village head does not only function as the length community's hands, but the presence village head here is a foundation and synergies with the community in the vision's and mission village so that the goals have been designed get the highest achievement, so that a prosperous village can be realized. Therefore, the existence of villages to realize national development cannot be separated from the central government regulations and their existence is accommodated through existing Laws.<sup>2</sup>

The regulation of village administration is written in law No. 6 of 2014 on villages and the terms of nomination of village apparatus and village head involving the existence of domicile requirements contained in Article 33 letter g and Article 50 paragraph 1 letter c which reads "Registered as a resident and residing in the local village at least 1 (one) year before registration".

The implementation of nominations by granting domicile requirements in essence will also result in conflict among the community because basically

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<sup>2</sup> Ayip Muflich, *Desa Ujung Tombak Pembangunan Nasional*, <http://www.kemendagri.go.id/article/2011/09/21/desa-ujung-tombak-pembangunan-nasional>, downloaded on July, 4 2020.

every citizen has the right to propose and proposed as a leader in the government system in accordance with the mandate contained in 1945 Constitution without any reduction of human rights and the sound of mandate contained in Pancasila ideology, namely social justice for all Indonesians, because the existence of domicile conditions proves that there will be restrictions on rights and justice for every individual. To overcome this problems, the abolition of this domicile requirement is necessary and in this case it has been cancelled by the stipulation of the decision of constitutional court of Indonesia No. 128/PUU-XIII/2015 as a manifestation of fulfilment in human rights and equality of justice for all Indonesians.

This legal effort is a very appropriate step that applies throughout the Nusantara to overcome restrictions on rights and justice for each individual, especially in the community of Pasar Batahan, Batahan District, Mandailing Natal Regency. Based on the initial observation, the author conducted an interview to Riska as one of the village head staff said that registration from outside the domicile is always accompanied by statements from the community who will be more likely to choose candidates from their own domicile areas so that it makes them no longer interested in running for the head of the village or village equipment. This information is also reinforced by the village matriarch which is we know *Niniak Mamak* which provides more support to the people who live from the village itself than from outside.

When juxtaposed with Islamic Law, the requirements of village head here can be review into the realm of *fiqh siyasah*, namely in the appointment of

*Imam* (caliph). The word *caliph* instead of the head of state is the prophet “successor” in maintaining religion and governing worldliness. He is not infallible, he does not revelation, and he does not monopolize the right to interpret religion. He is an ordinary human being who is a trust by the people because both, in the exercise of his religion, are just as seen in the person of Abu Bakr and Khulafa al-Rasyidin.<sup>3</sup>

From the description above, the writer can research the study on the nomination of village apparatus is an interesting study, the implementation of the decision of constitutional court of Indonesia No. 128/PUU-XIII/2015 on the elimination of domicile requirements for village apparatus candidates becomes a legal umbrella for the regulating of nomination village apparatus itself. Therefore, the title of the thesis is : **“The Implementation Of The Decision Of Constitutional Court Of Indonesia No. 128/PUU-XIII/2015 On The Elimination Of Domicile Requirements For Village Apparatus Candidates In Pasar Batahan Batahan District Mandailing Natal Regency”**

## **B. Research Identification**

Based on the background formulation above, the focus of problem in this research is to examine the Implementation of the Decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the Elimination of Domicile Requirements for Villages Apparatus Candidates. Especially in the nomination of Head Man in Pasar Batahan, Batahan District, Mandailing Natal Regency.

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<sup>3</sup> Djazuli, *Edisi Revisi Fiqh Siyasah Implementasi Kemaslahatan Ummat Dalam Rambu-Rambu Syariah* (Jakarta: Prenada Media, 2003), p. 59.

### **C. Research Limitation**

To avoid problem misunderstanding and misinterpretation of the research finding, the researcher would like to explain and define the key terms are used:

1. Implementation is application or implement.
2. Decision is a judge's statement that is poured in written form and pronounced by the judge in a hearing open to the public as a result of the examination of the case.
3. The Constitutional Court of Indonesia is a new, independent and independent institution, which has the authority to judge at the first and last levels whose decisions are final to examine the Law against of 1945 Constitution (Judicial Review).
4. Abolition is the act of removing the state provisions and a list of issuing decisions by the competent official.
5. Terms are conditions or instructions (as demands or requests that must be fulfilled) and carried out.
6. Domicile is the legal residence of a person or legal residence.
7. Candidate is a person who will become someone who has status.
8. Village apparatus is a village administration apparatus consisting of village government and up to the village head.

#### **D. Research Formulation**

Based on the background description of the problem above, the problems can be formulated as following:

1. How is the implementation of the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the elimination of domicile requirements for village apparatus candidates in Pasar Batahan, Batahan District, Mandailing Natal Regency?
2. What are the factors that influence the implementation of the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the elimination of domicile requirements for village apparatus candidates in Pasar Batahan, Batahan District, Mandailing Natal Regency?
3. How the Review of *Fiqh Siyasah* there is the implementation of the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the Elimination of Domicile Requirements for Village Apparatus Candidates in Pasar Batahan, Batahan District, Mandailing Natal Regency?

#### **E. Research Objectives**

In this section, the researcher would like to mention the objectives of those problems as follow:

1. To analyze the implementation of the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the elimination of domicile requirements for village apparatus candidates in Pasar Batahan, Batahan District, Mandailing Natal Regency.



2. To find out the factors that influence in the implementation of the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the elimination of domicile requirements for village apparatus candidates in Pasar Batahan, Batahan District, Mandailing Natal Regency.
3. To find out the Review of *Fiqh Siyasa* There is the implementation of the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the Elimination of Domicile Requirements for Village Apparatus Candidates in Pasar Batahan Village, Batahan District, Mandailing Natal Regency.

#### **F. Research Significances**

The benefits of this research are aimed at:

1. Researchers, namely as a condition for completing studies to obtain an academic degree in the field of Department of Constitutional Law , State Institute for Islamic Studies Padangsidimpuan.
2. To Sharia and Law Faculty to add to the literature as reference material for further researchers.
3. Society, namely as reading material for the wider community to add insight into the Implementation of the decision of constitutional court of Indonesia on the elimination of domicile requirements for village apparatus candidates.

## **G. Systematics of Discussion**

Chapter one consists of introduction of the research to describe a little of a problem which be the object in this research, covering the background and in the background of this thesis was describe the practice or implementation of the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the elimination of domicile requirement for village apparatus candidates in Pasar Batahan, Batahan District, Mandailing Natal Regency. The implementation that has done in the research location of this thesis was be contradiction with human right, problem formulation to get the ideal result of this thesis and to get the conclusion about that implementation. So, I made two problem formulations in this thesis, research objectives, research benefit that also really important for the researcher as the literatur and last in this chapter is previous research was consist in 3 previous researches with the different tittle, problem and result.

Chapter two theoretical frameworks discuss the meaning of implementation, constitutional court, general description of the village, village apparatus and village devices in Islamic law perspective. So, that in theory it need to be studied about whether the constitutional court specially for the elimination of domicile requirement for village apparatus is actually and the procedure with the Human Right, Customary Law and also Islamic Law.

So that the author contains the opinion of the community about the allowed candidates of village devices from outside the area raises the pro and contra of the community. This can be seen from the village government which

is the local government not the general government, the assumption of village elite concerns that will have an impact on the exploitation of village resources, technical adjustment of the law under the village. However, on the other hand, when the terms of domicile are abolished it has a positive impact on the outside community because in articles 28 and 27 of the 1945 Law which reads it violates the constitutional right of citizens to have equal opportunities in advancing collectively to advance the nation, the state as an effort to work and build the nation and its country. So, the decision of the Constitutional Court in this case sees how the equalization of human rights in accordance with the sound of the article in the 1945 Law that provides equalization of positions in the system of government.

Chapter three the author describes the research methods used in completing this thesis. The research is location in Pasar Batahan, Batahan District, Mandailing Natal Regency. This study started from January 2020 to Juni 2021 with a period of approximately 2 months.

This research is a field study or library research on the implementation of the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the Elimination of Domicile Requirements for Village Apparatus Candidates in the Pasar Batahan Village, Batahan District, Mandailing Natal Regency with a descriptive qualitative approach method with the acquisition primary data from the results of live interviews with parties who have carried out the elimination domicile requirement for apparatus candidate and data secondary obtained from written source of literatur related to the discussion in

this thesis. To support the validity of the data collected by the author, the author also includes documentation in form of writing, as well photos of research activities during research.

Chapter four will be described the description of the research location and the results of the research conducted by the researcher on the implementation of the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the Elimination of Domicile Requirement for Village Apparatus Candidates.

Chapter five contains of the conclusion of this research in the form of answer to the formulation of problems in chapter one and also suggestion that author will convey to the community on how implementation of the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the Elimination of Domicile Requirement for Village Apparatus Candidates from the Human Right, Customary Law and also Islamic Law.

## **CHAPTER II**

### **THEORETICAL DESCRIPTION**

#### **A. Theoretical Framework**

##### **1. Definition of Implementation of Policy**

The implementation is process, manner, deed of carrying out (design, decision, and etc.). Example: He reviewed the implementation of road construction in his area, this activity is an implementation of outlines the state direction. Implementation comes from the basic word.<sup>4</sup> If a policy has been made, the next step is the implementation of policy. Policy implementation is a continuation of the policy formulation and determination process. So, that the implementation of policies can be interpreted as actions taken, both by individuals and government groups, which are oriented towards achieving the goals outlined in policy decisions. In Simple term, implementation can be interpreted application.

Implementation is an activity or effort carried out to carry out all plans and policies that have been formulated and determined, complete with all the needs, the necessary tools, who is implementing out, where the place of implementation begins and how it should be implemented, a series of follow-up activities process after a program or wisdom is established consisting of decision making, strategic and operational steps or policies to become a reality in order to achieve the objectives of program that were original set.

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<sup>4</sup> Indonesia Dictionary.

The implications of implementation policies are the consequences that arise as a result the implementation of these policies. The results of evaluation on the implementation of policy can produce the expected (intended) impact or unexpected impact (spillover negative effect).<sup>5</sup> If a policy is taken appropriately, then the possibility of failure can still occur, if the implementation process is not good and optimal, then the policy fails to achieve the goals set by its makers. This suggests that policy implementation is in substance the right way to implement so that a good policy can achieve the goals set by policy makers.

This means that after decision is taken, the next step is how it is implemented. The implementation contains an interactive nature from activity process that precedes it. This means that policy making and implementation are related to another.<sup>6</sup> Therefore, a policy that has been made has no meaning if it is not implemented.

## **2. Constitutional Court of Indonesia Decision No. 128/PUU-XIII/2015**

The establishment of Constitutional Court of Indonesia as a special tribunal separate from the Supreme Court of Indonesia which carries out special duties is a conception that can be traced long before a modern nation-state that essentially tests the harmony of lower legal norms with higher legal norms. The modern history of judicial review which is a key feature of the Constitutional Courts authority in United State by Supreme

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<sup>5</sup> Abdullah Ramadhani dan Muhammad Ali Ramadhani, "Konsep Umum Pelaksanaan Kebijakan Publik", (Jurnal Publik, Vol 11 ; No. 01 : 2017 : 1-2 ), p. 4.

<sup>6</sup> Arifin Tahir, *Kebijakan Publik Dan Transparansi Penyelenggaraan Pemerintahan Daerah*, (Bandung : Alfabeta, 2014), p. 55.

Court can be seen as a development that lasts for 250 years, with a sense of resentment and widespread acceptance.<sup>7</sup>

The debate of judicial review has begun since the founding of the Republic of Indonesia when Soepomo and Muhammad Yamin discussed the draft constitution of the Republic of Indonesia.<sup>8</sup> The judicial review debate continued to develop as a discourse in the community until the end of the new order period. During the new order, the concept of judicial review was tried to be pioneered and accommodated in various laws and regulations as in Law No. 14 of 1970 on the Basic Provisions of Judicial Power, TAP MPR No. III/MPR/1978 on the Position and Working Relationship of the State Supreme Court or between The State High Institutions Law No. 14 of 1985 on the Supreme Court. However, all of them are far from adequate because they only regulate the material test of legislation under the Law.

The history of Constitutional Court of Indonesia (MK) establishment began with the adoption of Constitutional Court idea in the constitutional amendments made by the People's Consultative Assembly (MPR) in 2001 as formulated in the provisions of Article 24 paragraph (2), Article 24C, and Article 7B 1945 Constitution the result of Third Amendment passed on November 9, 2001. The idea of Constitution Court of Indonesia establishment is one of the developments of modern legal and

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<sup>7</sup> Maruarar Siahaan, *Hukum Acara MK Republik Indonesia*, (Jakarta: Sinar Grafia, 2012), p. 35.

<sup>8</sup> Sri Sumantri, *Hukum Uji Materi*, Edisi Kedua, (Bandung: Alumni, 1997), p. 71-72.

state thought that emerged in the 20th century.<sup>9</sup> After an in-depth discussion, the House of Representatives and the Government jointly approved Law No. 24 of 2003 on the Constitutional Court of Indonesia on August 13, 2003 and was ratified by the President that day (Statute Book No. 98 and Additional Statute Book No. 4316) which has been updated three times, namely Law No. 8 of 2011 and Law No. 7 of 2017 about Constitution Court of Indonesia.

Based on articles 24 paragraphs 1 and 2 of the 1945 constitution, the position Constitutional Court of Indonesia as one of the actors of judicial power besides Supreme Court of Indonesia, where the Constitutional Court of Indonesia was formed to uphold justice in the scope of the law as well as its authority. The position of Constitutional Court of Indonesia as the perpetrator of judicial power is in line with other judicial actors namely Supreme Court of Indonesia and other judicial institutions in accordance with the principle of constitutional supremacy and separation of judicial institution.<sup>10</sup>

In connection with the authority of the Constitutional Court over the Association of Village Apparatus Indonesia (Asosiasi Perangkat Desa Seluruh Indonesia/APDESI) submitted a request for a judicial review on October 15, 2015, one of the laws tested is Law No. 6 of 2014 on Villages,

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<sup>9</sup> B. Sutyoso, "Pembentukan Mahkamah Konstitusi Sebagai Pelaku Kekuasaan Kehakiman Di Indonesia", *Jurnal Konstitusi* 7, no. 6 (2010): 4–50.

<sup>10</sup> Sekretariat Jendral dan Kepaniteraan Mahkamah Konstitusi RI, *Hukum Acara Mahkamah Konstitusi*, (Jakarta: 2010), p. 47.



where the main problem is many residents who migrate, move or migrate to other regions with the aim of developing themselves.<sup>11</sup>

Then of course the migratory will certainly return to their hometown to develop themselves, but it is not accommodated by article 50 letter c on the village which states; *village apparatus as what article 50 means (village secretary, regional executive, and technical implementer) are appointed from qualified citizens; letter c is registered as a villager and resides in the village at least one (1) year before registration.*

The provisions of article 50 paragraph (1) c impede the political rights of regional residents who have migrated outside the area with the aim of developing themselves, then returning to their home regions to run as village devices. Article 50 paragraph (1) letter c violates the provisions of article 28 of the 1945 Constitution. The corrected judicial review petition was accepted by the Clerk of the Constitutional Court of Indonesia on November 11 and 18, 2015. The applicant submits a petition, including:

- a. Grant the application for review of article 33 letter g, article 50 paragraph (1) letter a, and article 50 paragraph (1) letter c law No. 6 of 2014 on Villages against the 1945 Constitution;
- b. States article 33 letter g, article 50 paragraph (1) letter a, and article 50 paragraph (1) letter c Law No. 6 of 2014 on Villages contrary to the 1945 Constitution;

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<sup>11</sup> Constitutional Court of Indonesia Decision No. 128/PUU-XIII/2015 on the Elimination of Domicile Requirements for Village Apparatus Candidates.

- c. Stating article 33 letter g, article 50 paragraph (1) letter a, and article 50 paragraph (1) letter c Law No. 6 of 2014 on Villages has no legal force, binding with all legal consequences;
- d. Order the loading of this decision in the State gazette of the Republic of Indonesia as appropriate.

The constitutional court based on the petition, finally on 02 August 2016 the constitutional court in its verdict which was stated in the decision Constitutional Court No.128/PUU-XIII/2015 stated granting the applicant's petition. To judge and decide by Decree No. 128/PPU-XIII/2015 On the decision the verdict stated that:

- a. Article 33 letter g and article 50 paragraph (1) letter c law No. 6 of 2014 contrary to the 1945 Constitution;
- b. Article 33 letter g and article 50 paragraph (1) letter c Law No. 6 of 2014 does not have binding legal force.

With the exit of that decision, has people proven who will register/run as a village apparatus no longer see the domicile requirement, which in essence the people can and are allowed to nominate themselves as a village apparatus wherever they are located (domiciled) even though the place of nomination is not a domicile area but only as a candidate area. This is in accordance with the spirit of article 28c paragraph (2) of the 1945 Constitution which states "every person has the right to advance

himself in fighting for his or her right collectively to develop his community, nation, and country”.<sup>12</sup>

### 3. General Description of the Village

The village to universal definition, is an agglomeration of settlements in rural areas. In Indonesia, the term village is the division of administrative territory in Indonesia under the sub-district, led by the village head. A village is a collection of several small residential units called *Kampung* (Banten, West Java) or *Dusun* (Yogyakarta) or *Banjar* (Bali) or *Jorong* (West Sumatra). The village head can be referred to by other names such as *Kepala Kampung* or *Petinggi* in East Kalimantan, *Klebun* in Madura, *Pambakal* in South Kalimantan, *Hukum Tua* in North Sulawesi.

Since the enactment of regional autonomy the term village can be called by another name, for example *Nagari* in West Sumatra, *Gampong* in Aceh, *Kampung* in Papua and West Kutai, East Kalimantan. Similarly, all terms and institutions in the village can be referred to and other names in accordance with the characteristics of village customs. This is one of the Government's recognition and respect for local origins and customs.

Law No. 32 of 2004 on Regional Government mentions that the village or other name is a legal community unit that has jurisdiction boundaries, authorized to regulate and manage the interests of the local community based on local origin and customs recognized and respected in

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<sup>12</sup> Article 28c Paragraph (2) of the 1945 Constitution Republik of Indonesia.

the government system of Unitary State Republic of Indonesia.<sup>13</sup>

According to R. Bintaro, the village is embodiment or unity of geography, social, economy, politics, and culture in an area in term of its reciprocal relationship and influence with other regions. Meanwhile, according to the Indonesian dictionary, a village is a unit of territory inhabited by a number of families who have a system their own government (headed by a village head) or a village is a group of houses outside the city that is a unit.<sup>14</sup> Village communities usually know each other and have high social attitudes and solidarity. In general, most of village community are farmers, because the village area is an agricultural area.

After the issuance of Law No. 5 of 1974 on the points of regional government, followed by Law No. 5 of 1979 on Village Government, the terms are uniformed into villages for every region throughout Indonesia. According to Law number 5 of 1979, the village is a unit of territory occupied by a number of residents as a community unit, including the unity of legal community that has the lowest government organization directly under the *Camat* and has the right to organize its own household in relationship of the Unitary State Republic of Indonesia. Meanwhile, according to Law No. 6 of 2014, the village is a legal community unit that

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<sup>13</sup> Agus, Dwiyanto Pembentukan Peraturan Desa, “Agus Dwiyanto, Reformasi Tata Pemerintahan Dan Otonomi Daerah, Pusat Studi Kependudukan Dan Kebijakan Universitas Gadjah Mada, Bagir Manan, Menyongsong Fajar Otonomi Daerdi, Pusat Studi Fakultas Hukum Universitas Islam Indonesia ”, *Independent* 2, no. 1 (2004): 43.

<sup>14</sup> Alamsyah Hamonangan and Walid Mustafa, “Evaluasi Kinerja Badan Permusyawaratan Desa Dalam Penyelenggaraan Pemerintahan Desa”, *Jurnal Ilmu Pemerintahan Dan Sosial Politik UMA* 3, no. 2 (2015): 1-3.

has the territorial boundaries that are authorized to regulate and manage government affairs and the interests of local community based on community initiatives, rights of origin, and recognized traditional rights and respected in the government system of Unitary State Republic of Indonesia.

#### **4. Village Apparatus**

The implementation of village government system has an attachment between several systems known as village apparatus. The village apparatus generally function as protectors of the villager strength in carrying out the village community ideals to achieve the stated goals that have been set towards a safe, peaceful and prosperous village. With the change of system in accordance with the national political situation and conditions, changes in village government have occurred.

The village apparatus is an assistant element of the village head that is tasked with assisting the village head in carrying out his duties and authority, whose number and designation are adjusted to the socio-cultural conditions of regional community.<sup>15</sup> In order to implement the homogenization of form and system of village government structures to ensure the realization of pancasila democracy in a village deliberation board (Lembaga Musyawarah Desa/LMD), LMD members are all members who are not chosen by the community but are directly elected and appointed by the head man.

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<sup>15</sup> Oktaviano Donald Dewi and Baptista & Fitri Sartina, "Pengaruh Rekrutmen Perangkat Desa Terhadap Kinerja Perangkat Desa Di Desa Andrapraja Kecamatan Rajadesa Kabupaten Ciamis," *Bisnis Indonesia*, 2018, p. 482–88.

The form of village government consists of village government and village representative bodies where the village government consists of the head man and secretary (sekdes, while *Badan Permusyawaratan Desa* (BPD) is the representative of villagers chosen by the villagers who have the role of maintaining customs, making village regulations and overseeing the implementation of village rules. Therefore, board members along with the head man establish village regulations (perdes). The head man is responsible to report the implementation of his duties to the Regent.<sup>16</sup>

While in formal juridical, the position of village apparatus in Village Law No.6 of 2014 article 48 and Government Regulations No. 83 of 2015 which is meant by village apparatus is; Secretary (village secretary), regional implementer (Pelaksana Wilayah/PELWIL), technical implementer (Pelaksana Teknis/PELTEK), based on article 61 paragraph 2 of the village apparatus is domiciled as an auxiliary element in the village government.<sup>17</sup>

## 5. Village Apparatus In Islamic Law Perspective

Islamic law means the entire provisions of Allah orders must be followed by a Muslim. From that definition sharia includes;

- a) *Aqoid* faith science,
- b) *Fiqh* science (human understanding of the provisions of Allah),
- c) *Akhlaq* Science (morality).

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<sup>16</sup> The Provisions of Village Law No. 6/2014 Article 48 and Government Regulation No. 83/2015 on the Village Role.

<sup>17</sup> <http://repo.iain-tulungagung.ac.id/id/eprint/13162>, accessed on Friday 21 August 2020 at 17.30 WIB.

Islamic law can also be interpreted as all provisions that were carried out and recommended by the Prophet Muhammad in carrying out daily life. Based on the description above, it can be concluded that Islamic Law is sharia which means the laws made by God for the people brought by a prophet, both laws related to belief (*aqidah*) and laws related to *amaliyah* (deeds).<sup>18</sup>

Judging from the Islamic Law Perspective on the concept of leader appointment and village apparatus who assist in the leadership process, there is something known as the word *Wazir*. In Arabic, *Wazir* is identical and tends to be the same as the minister who leads a government department. *Wazir* is an Assistant Head of a State (King/Caliph) in carrying out his duties and obligations, because a Head of a State is considering unable to handle all political and governmental problems without trusted and expert's people in their respective fields. Therefore, a Head of a State needs the assistance of a *Wazir*. So, that problems related to the implementation of the state and the government system can be delegated to *Wazir*. In other words, a *Wazir* is the right-hand of the Head of State to manage government administration.<sup>19</sup>

In the history of Islamic development, the meaning of *Wazir* as a helper can be seen from the role played by Abu Bakr in assisting the apostolic and state duties of the Prophet Muhammad SAW. According to imam al-Ghazali, the duties and objectives of government institutions are

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120. <sup>18</sup> Mohammad Daud Ali, *Hukum Islam*, (Jakarta: PT Raja Grafindo Persada, 2014), p.

<sup>19</sup> Ali Muhammad, *Fikih Empat Madzab*, (Jakarta : Pustaka Azam, 2009), p. 78.

institutions that have power and become a means of implementing sharia to realize the people benefit ensuring order in world and religious affairs. It also serves as a unity symbol of Muslims for the continuity Muslims history. In accordance with surah al-Baqarah verse (30);

قَالُوا تَجْعَلُ فِيهَا مَن يُفْسِدُ فِيهَا وَيَسْفِكُ الدِّمَاءَ

Meaning; Remember, when your Lord said to the angels, I wish to make a caliph in the land. (al-baqarah verse 30).<sup>20</sup>

From the Quran verse above can be drawn conclusions regarding the understanding that the head of state (king or caliph) in carrying out his duties requires and requires the performance of a Wazir. In fact, a leader will not be able to take care of his own household both political, economic, social and cultural fields that impact the problems of government system without trusted and competent people in each field so that this certainly requires Wazir. In other words, Wazir can be interpreted as a trusted person (right-hand) head of state or government in managing the affairs of his government.

## B. Related Finding

To support integral assessment and research as stressed in the background of the problem, the authors conducted a search with several related writings namely:

1. Thesis Yuyun Puji Lestari In her thesis entitled “*Pandangan Masyarakat Terhadap Putusan MK No. 128/PUU-XIII/2015 Tentang*

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<sup>20</sup> Referensi: <https://tafsirweb.com/290-quran-surat-al-baqarah-ayat-30.html>, accessed on Saturday 22 August 2020 at 13.23 WIB.



*penghapusan Syarat Domisili Bagi Calon Perangkat Desa (Studi kabupaten Tulungagung)*”. In the thesis concluded that the implementation of constitution court of Indonesia has been applied, in fact in the network of Prospective Village Devices from Bono Village Boyolangu sub-district in Tulungagung district on April 06, 2019, many residents from other villages participated in the test in the village apparatus , but from the view of community is still more likely to choose the own villages apparatus than from outside the domicile, they trust the village apparatus more domiciled than from outside the domicile.<sup>21</sup>

2. Mila Anggraini, with title of thesis is: ”*Analisis Siyasah Dusturiyah Terhadap Putusan Mahkamah Konstitusi No. 128/PUU-XIII/2015 Tentang Persyaratan Domisili Calon Kepala Desa*”. In this thesis aims to know the requirements domicile of village head in Constitutional Court of Indonesia decision No. 128/PUU-XIII/2015, and to know the analysis of Siyasah Dusturiyah requirements on the domicile requirement for village head in the Constitutional Court of Indonesia decision No. 128/PUU-XIII/2015.<sup>22</sup>

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<sup>21</sup> Yuyun Puji Lestari, *Pandangan Masyarakat Terhadap Putusan MK No. 128/PUU-XIII/2015 Tentang Penghapusan Syarat Domisili Bagi Perangkat Desa (Studi Kabupaten Tulungagung*, Skripsi IAIN TULUNGAGUNG, 2019.

<sup>22</sup> Mila Anggraini, *Analisi siyasah Dusturiyah Terhadap Putusan Mahkamah Konstitusi No. 128-PUU-XIII/2015 Tentang Persyaratan Domisili Calon Kepala Desa*, Skripsi UIN Sunan Ampel Surabaya, 2019.

## **CHAPTER III**

### **METHOD OF RESEARCH**

#### **A. Location and Time of Research**

##### 1. Research Setting

This research was conducted in Pasar Batahan Village, Batahan District, Mandailing Natal Regency. In this village, many people do not know that outsiders can be nominated village apparatus.

##### 2. Research Time

This research has was conducted in January 2021.

#### **B. Types of Research**

Research based on field studies (*Field research*) by containing information from the public in the form of interviews and books from other sources. Then in this research, the researcher contains primary, secondary, and tertiary data.

#### **C. Approach of the Methods**

The approach method used in this study is a qualitative descriptive method, in which the data collected is words, images, and not numbers. The data comes from interview scripts and photo. This study will contain data excerpts to provide an overview of the objects that will be examined by the researchers.

#### **D. Source of Data**

There are two sources of data in this thesis namely:

1. Primary of the Data

The primary data is the data obtained directly from the first source.<sup>23</sup> In this primary data, researchers will conduct live interviews to local society, culture society, the Head of Pasar Batahan Village, and interviews with the Village Apparatus.<sup>24</sup>

2. Secondary of the Data

The secondary data is the data that was retrieved as primary data supplement without having to go directly into the field, among other things, including official documents, law books, as well as existing journals and articles related to this study that tangible reporting and other research results.

#### **E. Data Collecting Methods**

In this study, researcher will use the following data collection methods:

1. Interview

Interview is one of the methods of data collection conducted through interviews, which is an activity that is carried out to get information directly by disclosing questions to the respondents.<sup>25</sup>

Interview that means face-to-face between interviewer with respondent

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<sup>23</sup> Aminuddin and Zainal Asikin, *Pengantar Metodologi Penelitian Hukum*, (Jakarta: PT: Raja Grafindo Pesada, 2010), p. 30.

<sup>24</sup> Andi Prastowo, *Memahami Metode-metode Penelitian*, (Jakarta: Ar-Ruzz Media, 2014), p. 31.

<sup>25</sup> Andi Prastowo, *Memahami Metode-Metode Penelitian*, (Jakarta: Ar Ruzz Media, 2014), p. 31.

and the activity is conducted verbally. Interview techniques are divided into two categories: structured and unstructured interviews.

#### 1) Structured Interviews

In structured interviews, researchers have figured out exactly what information to unearth from the source. In these conditions, researchers have usually made a systematic list of questions. Researchers can also use various research instruments such as recorder aids, cameras or photos, and other.

#### 2) Unstructured Interviews

Unstructured interviews are free interviews. Researchers did not use interview guidelines that contained specific questions, but only made important points in the issues that respondents wanted to unearth.

In this study, researchers used both interview techniques in data collection namely structured interviews and unstructured interviews. To collect research data, the researcher conducted interviews with local people Siti Fatimah and Pijai Saputra. The indigenous people Mizlan, the Head of Pasar Batahan Village Asbul and interviews with Village Apparatus Ruslan Abdi and Mizron and also District head Irsal Pariadi S.STP.

## 2. Observation

In this study, researchers will use the following data collection methods.<sup>26</sup> With the observation of these participants, it is expected that the data obtained will be more complete, sharp, and until it is known at the meaning level of each behavior seen.<sup>27</sup> As for what will be observed by researchers related to the Implementation of Constitutional Court of Indonesia Decision No. 128/PUU-XIII/2015 On the Elimination of Domicile Requirements for Village Apparatus candidates in Pasar Batahan Village, Batahan Sub-District of Mandailing Natal District.

## 3. Documentation

Documentation is one method of collecting data using written materials. In carrying out this method of documentation, researchers are instrumental in investigating written objects that in this case are notes, transkrip, books, newspapers, agendas, and other. From this understanding, it can be concluded that the documentation method is the collection of data by quoting, recording on certain documents, notes or writings that can provide information or evidence of a problem.

The documents needed and used by researchers to facilitate in this study are as follows:

- 1) Document interviews with the public and indigenous people.
- 2) Interview documents in the form of photos and writing.

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<sup>26</sup> Cholid Narbuko dan Abu Achmadi, *Metode Penelitian*, (Jakarta: PT. Bumi Aksara, 2005), p. 70.

<sup>27</sup> Sugiono, *Metode Penelitian Kuantitatif, Kualitatif dan R & D*, (Bandung: Alfabeta, 2009), p. 227.

- 3) Interview document with the head of Pasar Batahan Village and Village Apparatus.
- 4) Document list of nominations head man and village apparatus in Pasar Batahan Village.
- 5) The documents number of villagers and other documents related to Pasar Batahan Village.

#### **F. Analysis of the Data**

The data analysis used in this study is a qualitative analysis to processing and analysis of data adjusted to the data nature obtained from the field qualitatively. Data analysis is a process of searching and systemically drafting transkrip interviews, field notes and other materials accumulated to improve researchers understanding of what they research.

The steps and techniques that will be obtained to analyze qualitative data will be explained below. A writer leads to the opinion of a person named Lexy J. Moleong, who said that the steps and techniques for analyzing a qualitative data are as follows:

- a. Data editing, which is to organize the data redaction into a systematic sentence arrangement.
- b. Data reduction, is a checking the completeness of the data to look for the still lacking and putting aside irrelevant.
- c. Describe the data systematically associated with the processing data qualitatively according to the topics of discussion. Deduction that is

summarizing all data descriptions in several sentences in which the understanding is brief, dense and clear.<sup>28</sup>

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<sup>28</sup> Amirul Hadi dan Haryono, *Metodologi Penelitian*, (Bandung: Setia Jaya, 2005), p. 107.

## CHAPTER IV

### RESEARCH RESULTS

#### A. History Geographical and Demografi of the Research

##### 1. History of Batahan District

Batahan is a District in Mandailing Natal Regency, North Sumatra, Indonesia. Located on the border of North Sumatra and West Sumatra Provinces (West Pasaman Regency). It is located downstream of the Batang Batahan river that empties into the West Coast of Sumatra, The Indonesian Ocean.

Batahan District formerly consists of several huta (villages) that enter Natal District, South Tapanuli Regency. Then in 1992 Natal District was divided into three Districts, namely: Natal District, Batang Gadis District and Batahan District. In 1998 South Tapanuli Regency was divided into two Regency, namely: South Tapanuli Regency and Mandailing Natal Regency. Batahan District becomes part of Mandailing Natal Regency. In 2007 Batahan District was divided into two Districts: Batahan and Sinunukan Districts.

Sinunukan District was formed in line with the development of what was once a transmigration area. Finally, in 2012, the North Sumatra Parliament approved the establishment of Mandailing West Coast District. Prospective (balloon) West Coast Mandailing District is an expansion of the parent Mandailing Natal Regency.<sup>29</sup>

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<sup>29</sup> Sejarah Kecamatan Batahan, [https://id.wikipedia.org/wiki/Batahan,\\_Mandailing\\_Natal](https://id.wikipedia.org/wiki/Batahan,_Mandailing_Natal), accessed on January 12, 2021 at 15.51-16.30 pm.



Batahan District is now an area of 50,147 ha, has 18 villages, one of which is as a village (Pasar Batahan). The majority of the population is Muslim. Judging from ethnic, Batahan District is dominated by people of Minang, Malay, Mandailing and Javanese descent. The livelihoods of residents in addition to fishing catch have also begun to develop oil palm plantations and natural rubber. Unfortunately, the district that has 4,692 households is only 87.27 % of which is supplied with electricity.

## 2. Geographical Background of Research

The location of this research is located in Pasar Batahan, Batahan District, Mandailing Natal Regency. This village is a village located at the end of the border between North Sumatera and West Sumatera, while the geographical location of the village of Pasar Batahan is as follows:

1. The north side is bordered with Sari Kenanga Village.
2. The east side is bordered with PT. Sago Nauli.
3. The south side is bordered with PTPN IV Batahan.
4. The west side is bordered with Tamang Island.

**Tabel I. Orbitation**

<b>NO</b>	<b>ORBITATION</b>	<b>INFORMATION</b>
1	Distance to the capital of the sub-district	6 km
2	Distance to the capital of the district	128.8 km
3	Travel time to the capital of the sub-district	10 minutes
4	Travel time to the capital of the district	4 hours 11 minutes

*Source: Document Village Office of Pasar Batahan Batahan District Mandailing Natal Regency.*

As for the climate as the climate in Indonesia in general, namely tropical, the village of Pasar Batahan is also tropical climate with two seasons, namely the dry season between April to October and the rainy season between October to April.

### **3. Demographic Background**

#### **a. Total Population**

As for number of residents who live in the village of Pasar Batahan, there are 730 families (head of families) with the majority of Islam. And in the village of Pasar Batahan , there are 2 (two) tribes who live side by side, namely the Batak Mandailing and Minang tribes, while the majority of the tribes of the people in the village of Pasar Batahan are Minang because the village located on the border of the west coast of North Sumatra which is closer to West Sumatra with the Minang Kabau tribes.<sup>30</sup> This is due to the abundant natural wealth in the customary land area of the village of Pasar Batahan ranging from coconut palm, oil palm, areca nut, and fish producers with a large marine area and various fruit trees such as mango, rambutan, and orange.<sup>31</sup>

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<sup>30</sup> Interview with the Secretary Head of Pasar Batahan Village Mr. Ruslan Efendi at the Village Head Office on January 12, 2021 at. 14.45-15.10 pm.

<sup>31</sup> Interview with the Apparatus of Pasar Batahan Village Miss. Riska at the Village head Office on January 12, 2021 at. 15.10-15.20 pm.

At the time, the village of Pasar Batahan was the centre of the economy because it was a port for timber, feed and food ingredients and the important point is fish trading business and others who used water vehicles anchored on the Batahan Sea.

**Tabel II. Total Population in Pasar Batahan**

<b>NO</b>	<b>Religion</b>	<b>Household Data</b>	<b>Amount</b>	<b>Percentage</b>
1	Muslim	730	1.596	100 %
2	Christian	0	0	0 %
3	Hindu	0	0	0 %
4	Buddha	0	0	0 %
5	Konghucu	0	0	0 %
<b>Total Population 1.596 = 100%</b>				

*Source: Document Village Office of Pasar Batahan Batahan District Mandailing Natal Regency.*

When viewed in terms of population, the total population of Pasar Batahan is 1.596 people with details of 730 male and 866 female. With the number of heads of families consists of 730 heads of families. For more details of the division of the population can be seen in the table below.

**Tabel III. Amount of Population by Gender**

<b>NO</b>	<b>Gender</b>	<b>Quantity</b>	<b>Percentage</b>
1	Male	730	45,74 %
2	Female	866	54,26 %

<b>Total Population</b>	<b>1.596</b>	<b>100 %</b>
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*Source: Document Village Office of Pasar Batahan Batahan District Mandailing Natal Regency.*

**Tabel III. Based On Tribe**

<b>NO</b>	<b>Tribe</b>	<b>Quantity</b>	<b>Percentage</b>
1	Mandailing Batakness	17	1.06 %
2	Minang Kabau	1.579	98,94 %
	<b>Total Population</b>	<b>1.596</b>	<b>100 %</b>

*Source: Document Village Office of Pasar Batahan Batahan District Mandailing Natal Regency.*

b. Educational Conditions

Pasar Batahan is located in a very strategic area with an educational location, so that the villagers of Pasar Batahan as a whole feel the world of education well. Until now, many young generations of Pasar Batahan are studying to achieve a bright future although not entirely but this shows that the level of concern of the people of Pasar Batahan towards education is very high. For more details about the percentage of education in Pasar Batahan can be seen in the table below.

**Tabel IV. Education Data**

<b>NO</b>	<b>Degree</b>	<b>Quantity</b>	<b>Percentage</b>
1	Bachelor Degree/S1	37	2.31%

2	Senior High School	306	29.17 %
3	Junior High School	293	28.83 %
4	Elementary School	182	11.40 %
5	Not Studying	308	29.28 %
<b>Total Population</b>		<b>1.596</b>	<b>100%</b>

*Source: Document Village Office of Pasar Batahan Batahan District Mandailing Natal Regency.*

c. Community livelihood

The social economy situation of Pasar Batahan Village in general can be said to be based on livelihoods as farmers who grow crops in the fields and also as fishermen. In addition to being farmers and fishermen livelihoods in the Pasar Batahan Village also as farm labourers who work in oil palm plantations in the Batahan District itself namely PT. Sago Nauli and PTPN IV Batahan..

In terms of other jobs some of the people of Pasar Batahan Village also work as Civil servants and businesses or trade. For more details classified the types of work of the community of Batahan Market Village.

**Tabel V. Based on Livelihoods**

<b>NO</b>	<b>Jobs</b>	<b>Quantity</b>	<b>Percentage</b>
1	Fisherman	282	17.66 %
2	Farmer	73	4.57 %
3	Employe	25	2.56 %

4	Farm Labourers	142	8.89 %
5	Civil Servants	17	1.33 %
6	Carpentry	184	9.27 %
7	Traders/seller	12	1.75 %
8	Does not work	861	53.94 %
<b>Total Population</b>		<b>1.596</b>	<b>100 %</b>

*Source: Archive of the Office of Pasar Batahan Batahan District Mandailing Natal District Regency.*

**B. The Implementation of the Decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the Elimination of Domicile Requirements for Village Apparatus Candidates In Pasar Batahan Batahan District Mandailing Natal Regency**

The stages of the implementation of this election are categorized as follows:

**1. Socialization of the decision of Constitutional Court of Indonesia on the elimination of domicile requirements for village apparatus candidates in Pasar Batahan**

The selection of Village Apparatus in Pasar Batahan, Batahan District, Mandailing Natal Regency was held on November 30, 2016. This was held simultaneously throughout Batahan District of Mandailing Natal Regency. The implementation of the decision of Constitutional Court of Indonesia related to the elimination of domicile

requirements in Pasar Batahan, carried out in a synchronously after the village including Pasar Batahan.

The implementation of the decision of constitutional court of Indonesia on the elimination of domicile requirements for village apparatus candidates of Batahan District Mandailing Natal Regency is carried out thoroughly in every village including Pasar Batahan as a research site. Head Man and Village Apparatus responded well to the constitutional court of decision on the elimination of domicile requirement for village apparatus candidates who want to run for village apparatus. With the constitutional court of decision on the elimination of domicile requirements, the Village Head and village apparatus conduct socialization to the village community to streamline the implementation of the court's decision in the selection of village heads and village apparatus held on November 30, 2016 simultaneously throughout the Mandailing Natal Regency, especially in Pasar Batahan.

The implementation of the selection of village apparatus carried out by the head man in collaboration with the election implementation team and also board members. With the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the elimination of domicile requirements for village apparatus, the regent regulation has been issued in Mandailing Natal Regency.

In the socialization carried out by the head man and village apparatus in the village meeting room, the head men explained that a

constitutional court ruling that removes the domicile requirement for village apparatus candidates that's means village apparatus can come from outside the domicile or outside the Pasar Batahan area. Of course, some people are still confused about the verdict where the community does not understand how the procedure for the nomination of village apparatus and the selection of village apparatus, especially in Pasar Batahan. After the socialization and explanation to the community, the communities understand what is meant by the constitutional court of decision related to the elimination of domicile requirements for village apparatus candidates and accept the decision to be implemented. But as a community domiciled in the area of Pasar Batahan, some people still wants the village device comes from the local village considering this makes it easier for the community to convey aspirations directly, because the village devices that come from the local village are more aware of the community condition and the village area.

In accordance with the results of the author's interview with several speakers from various backgrounds in the Pasar Batahan, such as the village apparatus:

“As a village apparatus, we welcome the decision of the Constitutional Court and the Regent Regulation where the main purpose of the Constitutional Court decision is to provide equal opportunities for every citizen to have the opportunity to work within the government. But in this case, of course, we need people who are really close and well acquainted with the



community so that people are freer and more relative in conveying their aspirations as a whole.”<sup>32</sup>

This statement was not only delivered by Mr. Ruslan Abdi as the secretary, but the same thing was also conveyed by the Financial Headquarters of Pasar Batahan, Batahan District, Mandailing Natal Regency.

“This decision is of course very good for equality. rights above the law which provides opportunities for people who have the potential to develop the village, but in the same case I personally want the local village apparatus because it has a more positive impact in terms of service to the community.”<sup>33</sup>

With the same statement, Mr. Mizlan, as the traditional chairman or indigenous people of Pasar Batahan, Batahan District, Mandailing Natal Regency, where his statement is:

“Receiving candidates for village apparatus from outside the region or domicile in accordance with the decision of the constitutional court is actually not a problem because this is a provision that is based on valid legislation and must be implemented. However, it is a bit excessive if the village apparatus is chosen and taken from outside the village area itself because this can interfere with local wisdom and the rights of origin of the village. Therefore, this application is difficult to implement in areas that still respect customs, such as Pasar Batahan Village.”<sup>34</sup>

In terms of conveying aspirations and other needs, of course it requires a person who is closer and understands the character of the local village community.

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<sup>32</sup> Interview with Mr. Ruslan Efendi, at the head of village office on March 17, 2021 at 14.00-14.15 pm.

<sup>33</sup> Interview with Mr. Mizron, at the informant’s house on March 20, 2021 at 16.00.-16.15 pm.

<sup>34</sup> Interview with Mr. Mizlan, at the informant’s house on March 25, 2021 at 08.30-08.50 pm.

“When village apparatus are selected from outside the region, of course, this makes it difficult for the community to have direct contact with village apparatus that is actually outside the local village area.”<sup>35</sup>

Furthermore, he also said during the interview that:

“My own reason for prioritizing external candidates compared to other village apparatus is because usually candidates from the village themselves are more competent and have more knowledge capacity about the village.”<sup>36</sup>

As the researcher knows, it will feel strange when there are village apparatus that come from outside where the local village community has close local wisdom such as a celebration where almost all residents gather to help. This illustrates how strong and the closeness of the brotherhood and kinship they built. So it is clearly evident that to take the aspirations of the village community requires special closeness.

“As the community of Pasar Batahan fully support the election of village apparatus candidates outside the domicile because this will be able to increase the quality of the vision and the village own mission to make a prosperous village.”<sup>37</sup>

From the results of interviews with the people of Pasar Batahan, they agree with this, given the presence of new people, it is hoped that they can make changes to the village itself.

“In accordance with the statements that are supports the decision of the Constitutional Court to allow candidates for village outside their domicile, but must look at the capacity of each

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<sup>35</sup> Interview with Mrs. Siti Fatimah, at the informant’s house on March 29, 2021 at 10.00.-10.35 pm.

<sup>36</sup> Interview with Mrs. Siti Fatimah, at the informant’s house on March 29, 2021 at 10.00.-10.50 pm.

<sup>37</sup> Interview with Mr. Pijai Saputra, at the informant’s house on April 6, 2021 at 13.10-13.30 pm.

candidate so that things that will be expected to accommodate and realize aspirations society can be carried out properly.”<sup>38</sup>

In contrast to the lower-middle class speakers, namely the Millennial, where it is clear that they are more open to accepting the decisions of the Constitutional Court related to permissible for candidates for village apparatus outside the domicile area. Those are also agreeing with the decision as long as the candidate for the village apparatus fulfils the applicable terms and conditions.

“We agree with the decision as long as the candidates for village apparatus fulfils the applicable terms and conditions, because not all indigenous people of the village have good skills. If the candidate for the village apparatus is not a native of the village but has good skills, it is not wrong to become a village apparatus, because it does not rule out the possibility of being able to have a positive change impact within the village scope.”<sup>39</sup>

From the results of the author's interview with several sources related to the implementation of constitutional court of decision related to the elimination of domicile requirements for village apparatus candidates, that there are still many people who want village apparatus from the local village, because this will make it easier for the community in establishing community relations and will also be stronger in customs.

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<sup>38</sup> Interview with Mr. Saiman, at the informant’s house on April 19, 2021 at 13.00.-13.15 pm.

<sup>39</sup> Interview with Muhammad Uwar, at the informant’s house on April 27, 2021 at 10.00.-10.20 pm.

## 2. Selection of the Networking

The networking of village apparatus candidates in the village of Pasar Batahan through the socialization stage of announcements and plates from around the Pasar Batahan with the aim of the public to know the information of the village apparatus selection openly regardless of the domicile status in accordance with government regulations and the decision of Constitutional Court of Indonesia on the elimination of domicile requirements. The information was obtained during an interview with the chairman of the organizing committee for the networking of Mr. Rifnaldy at his residence. The organizing committee in this case has actually done several stages in the networking, namely the dissemination of announcement papers and socialization conducted directly with the community of Pasar Batahan, where in this case the implementing team of course carried out this network in accordance with the provisions of the Law and the rules of the constitutional court decision related to the elimination of domicile requirements.<sup>40</sup>

The implementation of the Village Nomination Equipment is actually done and has been mandated by each head man in the Batahan District, especially Pasar Batahan where the head man cooperates with the local District to determine the candidates of village apparatus that will later carry out their duties.

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<sup>40</sup> Interview With Mr. Rifnaldy at hhis housemen at 15 Maret 2021

“In the selection of head man in Pasar Batahan, it was conducted by board members in synergy with the election organizing committee in accordance with the existing legislation, namely Law No. 6 of 2014 on villages and clarified by the regulation of Mandailing Natal Regency Regent No. 22 of 2016 on the procedure of conducting the election of head man. However, related to the selection of village apparatus this is done by the elected head man in cooperation with the district head while board members Pasar Batahan here only as supervision.”<sup>41</sup>

The networking conducted by the head man and the implementing team related to the implementation of the constitutional court of decision was carried out properly. This information researcher got from Mr. Asbul as a head man of Pasar Batahan that said:

“The decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the elimination of domicile requirements for village apparatus candidates is certainly well received and appreciated because this also involves the involvement of human rights in it where everyone has the right to be elected and to vote wherever he lives.”<sup>42</sup>

Related to the terms and conditions of village apparatus candidates who run for office, there is no additional requirement that requires the village apparatus candidates to come from the village. This certainly has a positive impact for village apparatus candidates outside the domicile who want to run for village apparatus in Pasar Batahan, Batahan District, Mandailing Natal Regency.

“Related to additional terms for village apparatus candidates outside the domicile is not found and not done considering the network of village apparatus has been regulated in the law and

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<sup>41</sup> Interview with Mr. Ridho Risky, at the informant's house on March 11, 2021 at 10.00-10.15 pm.

<sup>42</sup> Interview with Mr. Asbul, at the head of village office on March 15, 2021 at 09.00-10.30 pm.

must be implemented in accordance with the regulation so as not to violate the provisions in the legislation.”<sup>43</sup>

The requirements in the nomination of village apparatus in the Pasar Batahan, Batahan District Mandailing Natal Regency, namely:

- a. Citizens of Republik of Indonesia
- b. Fear the One God
- c. Hold firmly and practice Pancasila, implement the 1945 Constitutional Republic of Indonesia and Bhinneka Tunggal Ika
- d. The lowest educated graduates of senior high school or equivalent
- e. Be at least 20 (twenty) years old until 42 (forty two) years old at the time registration
- f. Willing to be nominated Apparatus Village
- g. Not currently serving a prison sentences
- h. Never sentenced to prison on a court ruling that has permanen legal force for committing 5 (five) years or more, except 5 (five) years after completing imprisonment and to announce honestly and openly to the public that the person concerned has been convicted and is not a the perpetrator of repeated crimes
- i. Not currently having their voting revoked in accordance with a court decision which has permanent legal force
- j. Able-bodied

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<sup>43</sup> Interview with Mr. Asbul, at the head of village office on March 15, 2021 at 09.00-10.30 pm.

k. Understand village customs

l. Willing to live in the village after being appointed as a village apparatus

In accordance with the statement above, that in the networking conducted by the head man and the implementing team that does not include the requirements of domicile for village apparatus candidates in the sense of not closing and providing opportunities for village apparatus candidates outside the domicile. This is seen in the table of results of networking candidates for Pasar Batahan following:

**Tabel VI. List of Village Apparatus Candidates**

<b>NO</b>	<b>NAME</b>	<b>ADDRESS</b>
1	Ruslan Abdi	Pasar Batahan
2	Mizron	Pasar Batahan
3	Andi Gunawan	Pasar Batahan
4	Hurietno	Kuala Batahan
5	Endra Madi	Pasar Batahan
6	Hendri	Sari Kenanga
7	Vingki Handayni	Pasar Batahan
8	Bahagia	Sari Kenanga
9	Nelvi Rahmi	Pasar Batahan
10	Dahriyal	Pasar Batahan
11	Arpan	Pasar Batahan
12	Indra Musafir	Pasar Batahan

13	Uslan	Pasar Batahan
14	Bambang	Pasar Batahan
15	Ramdani	Pasar Batahan
16	Hendra	Pasar Batahan

*Source: Document Village Office of Pasar Batahan Batahan District Mandailing Natal Regncy.*

Based on the table above and on the knowledge of the researcher obtained from the interview results that the implementation of Constitutional Court of Indonesia related to the elimination of domicile requirements for village apparatus candidates has been implemented by the head man together with the implementing team in the network of village apparatus candidates without stating the requirements of domicile in the registration procedure. This is seen by candidates from outside the domicile (Pasar Batahan) namely Mr. Hendri and Mr. Bahagia from Sari Kenanga and Mrs. Hurietno from Kuala Batahan Village.

In the network of village heads and implementing teams, of course, it is not immediately accept the files of village apparatus candidates both from within the domicile and from outside the domicile. But the village head and the implementing team also asked for advice and input from the surrounding community as well as indigenous leaders in the village of Pasar Batahan in Batahan District, Mandailing Natal Regency.



### 3. Screening

Filling the position of village apparatus in the village government environment or networking and filtering of village apparatus candidates is carried out in order to fill the vacancy of the village secretary, village head, section head and head of village executive affairs, as from the results of the study that the implementation contained in the research site can be classified as follows:

Screening is an activity carried out by the committee of networking and filtering of village apparatus in the form of the implementation of screening exams for candidates who are eligible to take the exam until the determination of candidates who pass and obtain the highest score. The stages in screening candidates of village apparatus are as follows:

- a. Examination/research of requirement files
- b. Completion of administration and completeness
- c. The committee reports the screening results to the head man
- d. Written consultation by the head man to the District regarding the proposed determination of candidates who are eligible to participate in the selection
- e. In the event that the District Head recommendation contains a rejection, the head man conducts the networking and re-screening of candidates

- f. Announcement of candidates who are eligible to participate in the selection
- g. Preparation for selection implementation:
  - 1) Discussion of exam manuscript preparation
  - 2) Appointment of exam script building team
  - 3) Preparation of exam manuscripts
  - 4) Submission of invitation letter
  - 5) Preparation of the test site and its completeness
- h. Exam implementation
- i. Correction of exam results (In the event that there are more than 1 (one) candidate who obtained the same highest score in 1 (one) position formation, then on that day also held a retest followed by candidates who obtained the same score until obtained 1 (one) candidate with the highest score)
- j. Announcement of exam results
- k. The committee reported the test results to the head man
- l. Written consultation by the head man to the District Head regarding the proposed appointment of village apparatus

Where in accordance with the statement of the Head of Batahan

District village:

“That the process of networking village devices on November 30, 2016 involving village apparatus candidates instead of local villagers. Participants were followed from Pasar Batahan, Kuala

Batahan and Sari Kenanga which were broadcast through audio socialization around the village.”<sup>44</sup>

In accordance with the regulation of Law No. 6 of 2014 on Villages and Permendagri No. 83 of 2015 on the mechanism of selection of village apparatus with the following mechanisms:<sup>45</sup>

- a. Screening tests are conducted in writing by the implementing team
- b. Prospective village devices are Indonesian villagers who have submitted an application to the village apparatus screening and networking committee to follow the village apparatus nomination.
- c. Candidates of village apparatus hereinafter referred to as candidates are prospective candidates who have gone through the research process and met the administrative requirements by the village apparatus screening and networking committee.
- d. Prospective candidates will then take the first two tests of writing tests related to government administration and computer optimizes capability tests.

In accordance with the statement conveyed by Mr. Rifnaldi as the chief executive of screening said:

“That the screening conducted by the implementing team in the selection of village apparatus candidates in Pasar Batahan is by conducting an intellectual ability test in carrying out its duties as

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<sup>44</sup> Interview with Mr. Asbul, at the head of village office on March 15, 2021 at 11.00-11.30 pm.

<sup>45</sup> Law No. 6 of 2014 on Villages and Permendagri No. 83 of 2015 on the Mechanism of Selection of Village Apparatus with the Following Mechanisms.

well as an administrative test whether the village apparatus candidates has met the administrative requirements that have been determined by the organizing team to be entitled or not to take the test of prospective village apparatus.”<sup>46</sup>

The village apparatus is empty, then the head man appoints and assigns an executor of the task of the local village apparatus and it is referred to as a mutation of the position. Filling the position of village apparatus by means of mutations implemented through the selection mechanism, the requirement to follow the selection of village apparatus mutations is to submit a written request to follow the selection of village apparatus mutations to the village head by attaching:

- a. Copy of last diploma
- b. Certificate appointment as a village apparatus

The selection was organized by the selection committee applied with the decision of the head man, with the assessment criteria covering the experienced aspects of work as a village apparatus, work performance, skills in the field of computers and office administration presentation of the description of tasks and functions of the position of village apparatus to be filled. In accordance with village regulations that are willing to live permanently in the area of the village in question if it has become a village apparatus. For civil servants who run for village equipment in addition to having to qualify but must also get written permission from the officials of staffing supervisors in accordance with the legislation, but the rights as civil servants are still obtained.

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<sup>46</sup> Interview bersama bapak Rifnaldy di kediaman beliau pada 23 maret 2021

#### 4. Consultation

After the screening with various stages of file selection and intellectual ability test, the next stage of head man consults the apparatus village candidates with the District Head of the selection results carried out in order to obtain approval from the District Head for the official inauguration of village apparatus. In the consultation, the village head brought 11 of the 16 prospective participants who registered and took the exam. Then the village head consulted on 11 candidates for village officials who would later serve as village officials in Pasar Batahan, Batahan District, Mandailing Natal Regency.<sup>47</sup>

In accordance with the results of the interview with the Head of Pasar Batahan explained in article 49 paragraphs 2 of the Village Law, the village apparatus was raised by the head man after being consulted with the Camat on behalf of the Regent/Mayor. Government regulations governing the removal of village apparatus are implemented by mechanism as follows:

- a. The head man conducts the networking and filtering or selection of prospective village apparatus
- b. The head man consults with the District Head or other mentions regarding the appointment of village apparatus

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<sup>47</sup> Interview with Mr. Asbul, at the head of village office on March 15, 2021 at 09.00-10.30 pm.

- c. The District Head or other designations provide written recommendations that contain about village apparatus candidates that have been consulted with the head man
- d. Written recommendations of the District Head or other designations are used as the basis by the village head in the appointment of village apparatus with the decision of the head man

Pasar Batahan Head said that in Permendagri 83/2015 also regulates the mechanism of village apparatus removal as follows which is basically the same as stipulated in the Government Regulation:<sup>48</sup>

- a. The head man may form a team consisting of a chairman, a secretary and at least a member
- b. The head man shall conduct the networking and screening of village apparatus candidates conducted by the team
- c. Implementation of the networking and screening of prospective village apparatus candidates is carried out no later than 2 (two) months after the position of village apparatus is vacant or dismissed
- d. The results of networking and screening of prospective village apparatus at least 2 (two) candidates were consulted by the head man to the District Head

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<sup>48</sup> Pasal 4 ayat 1 Permendagri 83 Tahun 2015

- e. The District Head provides a written recommendation to the village apparatus candidate no later than 7 (seven) working days
- f. The recommendation given by the District Head is in the form of approval or rejection based on the specified requirements
- g. In the event that the District Head gives approval, the head man issues a decision of the head man on the appointment of village apparatus
- h. In the event that the District Head recommendation contains a rejection, the head man conducts the networking and screening of the village apparatus candidates

After the networking of village apparatus candidates by the head man and the implementing team, then the head of the village consulted with the District Head to obtain recommendations for approval from the District Head on the village apparatus candidates that will be appointed.<sup>49</sup>

“The District Head received the arrival of the head man to conduct a consultation on the list of village apparatus candidates that have met the criteria for the next stage whether given recommendations for approval or not.”<sup>50</sup>

In accordance with the interview results, the consultation of the head man together with the sub-district was conducted in order to obtain a letter of recommendation for approval for the inauguration of

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<sup>49</sup> Interview with Mr. Asbul, at the head of village office on March 15, 2021 at 09.00-10.30 pm.

<sup>50</sup> Interview with Mr. Irsal Pariadi S.STP, at the head of sub-district office on March 8, 2021 at 10.10-10.10.20 pm.

village apparatus that will be in charge in accordance with the position of the village apparatus that has been determined.

## **5. Approval of the Recommendation**

The implementation of constitutional court related to the elimination of domicile requirements for village apparatus candidates after consultation then the next stage is approval for consultation between head man and district head related to village apparatus candidates from the results of networking conducted by the head man and the implementing team. The head man in terms of providing written recommendations can be in the form of approval or rejection of the proposed appointment of village apparatus in accordance with the capacity owned by each candidate, and also serving as a village apparatus is able to carry out its duties and functions well.

From the interview result that the village apparatus candidates proposed by the village head amounted to 16 (sixteen) village apparatus candidates from 3 (three) different village areas, then this became a consideration for the District Head to determine and give recommendations for approval of the village apparatus that has been consulted.

“After the head man with the implementing team conducted an examination to the prospective village apparatus then we consulted the Camat to obtain approval for the village apparatus to be received.”<sup>51</sup>

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<sup>51</sup> Interview with Mr. Asbul, at the head of village office on March 15, 2021 at 11.00-11.45 pm.



Therefore, Batahan District Mandailing Natal Regency provides recommendations for approval of 11 (eleven) village apparatus candidates where 1 (one) of them comes from outside the domicile who are ready to be appointed and reject 5 (five) village apparatus candidates that are still categorized as not having enough criteria and capacity to become village apparatus. Here is the table of village apparatus candidates resulting from the recommendation of approval of the head of Batahan district to the head of village to be ready to be held in office:

**Tabel VII. List of Village Apparatus**

<b>NO</b>	<b>NAME</b>	<b>ADDRESS</b>
1	Ruslan Abdi	Pasar Batahan
2	Mizron	Pasar Batahan
3	Andi Gunawan	Pasar Batahan
<b>4</b>	<b>Hurietno</b>	<b>Kuala Batahan</b>
4	Vingki Handayni	Pasar Batahan
6	Bahagia	Sari Kenanga
7	Nelvi Rahmi	Pasar Batahan
8	Dahriyal	Pasar Batahan
9	Arpan	Pasar Batahan
10	Indra Musafir	Pasar Batahan
11	Uslan	Pasar Batahan

*Source: Document Village Office of Pasar Batahan Batahan District Mandailing Natal Regency.*

Based on the table above that the implementation of the decision of constitutional court of Indonesia related to the elimination of domicile requirement for village apparatus candidates has been addressed by the Pasar Batahan where it appears that the village apparatus candidates from outside the domicile is Mrs. Hurietno who is domiciled in the village of Kuala Batahan.

“The implementation of constitutional court of decision related to the removal of the terms of domicile is actually well implemented, where the head man working with district head has opened opportunities for candidates outside the domicile where the election of Mrs. Hurietno who comes from outside the Pasar Batahan that is from the Kuala Batahan and indeed he has a very good capacity to serve as a village apparatus.”<sup>52</sup>

The implementations of the selection of village apparatus candidates certainly do not forget the active role of the community, especially the Pasar Batahan. So, that the selected village apparatus candidates do have a good knowledge and capacity base so that the tasks and functions are carried out properly, given the existence of contained in the provision of written recommendations that are *like* or *dislike* in accordance with the statement of Mr. Irsal Pariadi S.STP as a Head of Batahan District Mandiling Natal Regency.

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<sup>52</sup> Interview with Mr. Irsal Pariadi S.STP, at the head of sub-district office on March 8, 2021 at 10.10-10.10.20 pm.

## 6. Inauguration of the Apparatus Village

The provision of recommendations for written approval of village apparatus candidates by the District Head is then carried out the inauguration of village apparatus bags that have obtained approval from the District Head. The inauguration of village apparatus was organized by the committee by inviting several elements from the village and outside the village, among others: family of village apparatus candidates, village government, Boar Members (BPD), LMD, PKK, RT, RW, community leaders, Batahan District, and from *Pemuda Pancasila*.

The appointed village apparatus is numbered 11 (eleven) village apparatus where 10 (ten) village apparatus come from Pasar Batahan V and 1 (one) Apparatus from outside the domicile that is from Kuala Batahan. Here is the table of division of the position of the village apparatus appointed:

**Tabel VII. List of Village Apparatus Inaugurations**

NO	NAME	POSITION	ADDRESS
1	Ruslan Abdi	Sekretaris Desa	Pasar Batahan
2	Mizron	Kaur Keuangan	Pasar Batahan
3	Andi Gunawan	Kaur Tata Usaha	Pasar Batahan
<b>4</b>	<b>Hurietno</b>	<b>Kaur Perencanaan</b>	<b>Kuala Batahan</b>
4	Vingki Handayani	Kasi Pemerintahan	Pasar Batahan
6	Bahagia	Kasi Kesejahteraan	Sari Kenanga

7	Nelvi Rahmi	Kasi Pelayanan	Pasar Batahan
8	Dahriyal	Kepala Dusun	Pasar Batahan
9	Arpan	Kepala Dusun	Pasar Batahan
10	Indra Musafir	Kepala Dusun	Pasar Batahan
11	Uslan	Kepala Dusun	Pasar Batahan

*Source: Document Village Office of Pasar Batahan Batahan District Mandailing Natal Regency*

The inauguration on behalf of the above village apparatus has been approved by the Regent of Mandailing Natal Batahan District, Head of Pasar Batahan, Batahan District, Mandailing Natal Regency as well as full support by the surrounding community and also indigenous leaders who in the inauguration do not violate the customs and tribal traditions in the Pasar Batahan. The hope conveyed by District Head and Head of Pasar Batahan in his speech is that after the appointment of new village apparatus, namely the head of administrative and public affairs can maintain the mandate in the form of improved service performance in Pasar Batahan which is getting better and must have ethics because the village apparatus is in a position as a bureaucrat, can carry out the mandate according to what is assigned , as well as being able to bring the good name of Pasar Batahan in the future.

As the researcher knows, there have been a lot of public responses regarding the implementation of the decision of constitutional court of Indonesia on the elimination of domicile requirements for

village apparatus candidates, especially in Pasar Batahan, Batahan District, Mandailing Natal Regency.

**C. The Factors That Influence of the Implementation of the Decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the Elimination of Domicile Requirements for Village Apparatus Candidates in the Pasar Batahan Batahan District Mandailing Natal Regency**

The factors in the implementation of the decision of Constitutional Court of Indonesia related to the elimination of domicile requirements in Pasar Batahan, as follows:<sup>53</sup>

1. Education

In the implementation of the decision of Constitutional Court of Indonesia related to the elimination of domicile requirement of village apparatus candidates in the Pasar Batahan, the author found factors that hindered the implementation of the ruling. Education is one of the factors in the implementation of constitutional court of Indonesia decision regarding the elimination of domicile requirements for village apparatus candidates in the Pasar Batahan.

In accordance with the legislation that the requirements village apparatus candidates are public high schools. Selection of village apparatus candidates is seen from the background of their education in accordance with the established regulations. Especially in the village of Pasar Batahan that in the acceptance of village apparatus, the head man

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<sup>53</sup> Interview With Mr. Irsal Pariadi (Sub-District of Batahan) and Asbul (Head of Pasar Batahan Village) at Their Residence on April 2021.

and the implementing team look at the educational capacity of the village apparatus candidates that register, where the implementing team pays more attention to candidates who have a good background and experience in the world of government.

The educational background strongly supports the quality of performance of the village apparatus, so that the objectives of the village can be carried out properly and achieved in accordance with the vision and mission of the village itself. In addition, education can also provide factors whether a person has the capacity or not because in the world of work experience is not enough, must have extensive knowledge in order to solve problems in the village. The community in terms of education asks that the selected candidates must really have a wide knowledge capacity so that the aspirations of the community can be carried out properly and can interpret the aspirational intentions conveyed by the community for the development and progress of the village.

Pasar Batahan is one of the villages whose education level is still sufficient, considering the high population of people who do not attend school is 308 out of 1,596 so we need a village apparatus candidates that is able to give a positive impact to the village community. In the implementation of the decision of Constitutional Court of Indonesia related to the elimination of domicile requirement for village apparatus candidates there are still many who do not

understand how it is implementation, because of the educational factors of those who still do not believe and are confident in the decision will be allowed candidates of village apparatus from outside the domicile so that this makes the head man and team difficult in explaining the intent of the verdict.

## 2. Customs

Factors that greatly influence the implementation of the decision of Constitutional Court of Indonesia related to the elimination of domicile requirements for village apparatus are the customary factors that exist in the village, especially the community Pasar Batahan. The customary provisions in Pasar Batahan are highly respected and respected by the local community because when the customary regulations are not implemented it will violate the rules.

Customs in the implementation of the decision of Constitutional Court of Indonesia related to the elimination of domicile requirements for village apparatus in the Pasar Batahan is very important, because in the system of selection of village apparatus in Pasar Batahan in addition to following the laws and regulations that have been set, the head man and the implementing team must also comply with the customary rules that apply in the Pasar Batahan. In the selection of village apparatus candidates, the head man and the implementing team must ask permission, advice and input to indigenous leaders (Niniak Mamak) on the candidates who will be received as village apparatus in Pasar

Batahan. The indigenous people (Niniak Mamak) requested that the candidate who later became a village apparatus in Pasar Batahan must have knowledge of the customs prevailing in the village so that in carrying out their duties do not violate the local customs rules.

In the customary rules in Pasar Batahan, village apparatus would be good to come from the village itself that understands and knows the customary regulations in the Pasar Batahan, to facilitate indigenous figures in conveying input without having to explain in detail to the village apparatus later and know the cultural conditions of the surrounding community. So one of the factors that have an impact in the implementation of constitutional court of Indonesia decision related to the elimination of domicile requirements for village apparatus candidates, especially in Pasar Batahan is the customary factor that applies in the Pasar Batahan area.

### 3. Social Factors

Social is a factor that includes family relationships, worker views, political freedom and public relations. Against the implementation of the decision of constitutional court of Indonesia related to the elimination of domicile for village apparatus candidates, especially in the Pasar Batahan, social factors greatly influence the implementation of the verdict, considering the community of Pasar Batahan is a community whose natives are from the region and have a social where they are slightly closed to the social culture outside area.



Public relations in Pasar Batahan are very strong so that their local wisdom is still maintained this is seen when there is an activity then the community will work together to complete the activity. This has a very strong influence for the implementation of the decision of constitutional court of Indonesia regarding the elimination of domicile requirement for village apparatus candidates in Pasar Batahan.

Social villagers of Pasar Batahan wants a village apparatus that will be in charge in the Pasar Batahan should actually be people who have a high social spirit in order to facilitate the community in establishing cooperation relationships in terms of conveying their suggestions or aspirations related to the development of local villages. Because when the village apparatus lacks social soul, it will make it difficult for the community in sharing affairs related to the surrounding community.

The high social situation of local wisdom, it slightly complicates the implementation of the decision of constitutional court of Indonesia related to the elimination of domicile requirement for village apparatus candidates that allow candidates outside the domicile. However, this certainly does not hinder the implementation of this verdict because the community also wants a village apparatus that has a high capacity and social spirit even though it comes from outside the domicile.

While the interview with the Head of Pasar Batahan discovery of several factors inhibiting in netting and screening candidates for village before the village submitted the list of candidates to the District Head Office because it involves candidates from outside the domicile. So in this case, the head man and the implementing team found factors such as lack of files and the presence of several communities requesting that candidates for village officials should be selected from their own village and closing the existence of candidates from outside the domicile. However, these factors did not prevent the head man and the implementing team from conducting the networking and screening of candidates for village apparatus in accordance with the decision of constitutional court of Indonesia, namely accepting candidates for village apparatus who came from outside the domicile.

In contrast to the Head of board members (BPD) Pasar Batahan, Batahan District, Mandailing Natal Regency in the networking and screening of village apparatus candidates in Pasar Batahan, the factors found were the strong voice of traditional leaders in voicing local customary rights who asked for village apparatus candidates to come from local villages so that local wisdom Villages are more well-maintained and well-executed.

#### **D. Research Analysis of Islamic Prospective**

From some of the presentations of the interviewers above, there are several things that can be used as material for analysis which will determine the nature of the implementation of the decision of Constitutional Court of Indonesia on the elimination of domicile requirements for village apparatus candidates in the Pasar Batahan, Batahan District, Mandailing Natal Regency as the research location.

As for what can be stated as follows:

##### **1. Equality Before the Law**

Each citizen is considered to have the same rights and positions, while the head of the people has no advantage over the other citizens. Freedom, equality and brotherhood are the fundamentals of the continuity of the people and become the basic habits of the people in the alliance of peoples in the archipelago society. In this people's society there are no levels based on the origin of the descendants that distinguish one from another, and this becomes a populist pattern in the life of the ancient people of the archipelago. This indicates that in the ancient people of the archipelago has been known the existence of a democratic group living system.<sup>54</sup>

The issuance of a constitutional court ruling related to the elimination of domicile requirements for village apparatus candidates illustrates the state of similarity of position in the system of government

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<sup>54</sup> Jailani, Sistem Demokrasi Di Indonesia Ditinjau Dari Sudut Hukum Ketatanegaraan, Jurnal Inovatif, VIII No. I Januari 2015.

that each individual can be nominated and run for government officials anywhere without any restrictions on the requirements to the territory stipulated by the law. The implementation of the decision of constitutional court of Indonesia related to the elimination of domicile requirements for village apparatus candidates provides an opportunity for every individual Indonesian citizen who wants to become a village apparatus without having to doubt the requirements of domicile because the meaning of equality before the law is found in almost all state constitutions. This is the norm that protects the human rights of citizens.

Equality before the law means every citizen must be treated fairly by law enforcement and government officials. So every law enforcement officer is constitutionally bound by the value of justice that must be realized in practice, but upholding equality before the law is not without obstacles. It can be juridical and political barriers, or sociological and psychological barriers. Therefore, the holding of this public lecture activity in order to provide enlightenment related to the solutions to the problems.

The equality of position for every citizen practiced in Pasar Batahan in the implementation of the decision of Constitutional Court of Indonesia has actually been well organized by the head man and the implementing team in screening and networking prospective village apparatus where they provide space for village apparatus candidates originating from outside the village domicile area of Pasar Batahan. The

decision of the decision of Constitutional Court of Indonesia related to the elimination of the requirement of domicile for village apparatus candidates also has a positive impact in law enforcement in Indonesia, especially providing equal opportunities and positions for citizens in Indonesia who want to serve as a village apparatus regardless of the status of domicile.

## 2. Democracy

Since independence as a nation state, the Indonesian nation has always been in the steps of relentlessly striving to build democracy. In the implementation of procedural-electoral democracy that organizes elections on a regular basis, the participation of the people is the dominant factor and indicator for the success of democracy.

The concept of democracy contained in the implementation of the decision of Constitutional Court of Indonesia related to the elimination of domicile requirements for village apparatus candidates is the granting of freedom for individuals to register as a village apparatus anywhere without worrying about the territorial boundaries that are removed through the decision of the Constitutional Court No. 128/PUU-XIII/2015. The head man and the implementing team in conducting the networking and screening of prospective village apparatus also involve the community to be able to participate in providing their advice and opinion on the constitutional court of

Indonesia decision of regarding the elimination of domicile requirement for village apparatus candidates outside the domicile.

### 3. Review of the *Fiqh Siyasa*

In *fiqh siyasah* selection of village devices is arranged in accordance with the rules of Islamic law, where in Islam village devices must be chosen from people who do have good competence based on quality. Choosing a representative or more representatives.<sup>55</sup> As *Uliil Amri* (Leader) is obliged to choose the right person to take care of everything related to the Muslims

In terms of accepting the aspiration to determine who is eligible to be a village apparatus in the Pasar Batahan has been implemented well by the head man and the implementing team without any secrets or prohibitions to channel his opinion because freedom of speech is a concept of Indonesian democracy stipulated in the law. Islamic law means the entire provisions of Allah order must be followed by a Muslim

مَنْ عَمِلَ صَالِحًا مِنْ ذَكَرٍ أَوْ أَنْثَىٰ وَهُوَ مُؤْمِنٌ فَلَنُحْيِيَنَّهٗ حَيَاةً طَيِّبَةً ۖ  
وَلَنَجْزِيَنَّهُمْ أَجْرَهُمْ بِأَحْسَنِ مَا كَانُوا يَعْمَلُونَ

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<sup>55</sup> Ibnu Tarmiah Al- Siyasa Al-Syariah, p. 14.

Meaning: Whoever does good, both male and female, while believing, we will surely give him a good life and we will reward you with a better reward. (An-Nahl verse 97).<sup>56</sup>

It is as if this verse gives a warning to the believer, there is a happy and prosperous life in the life of this world and the hereafter as long as the human soul carries out good and righteous deeds sincerely.

إِنَّ اللَّهَ يَأْمُرُكُمْ أَنْ تُؤَدُّوا الْأَمَانَاتِ إِلَىٰ أَهْلِهَا وَإِذَا حَكَمْتُمْ بَيْنَ النَّاسِ أَنْ تَحْكُمُوا بِالْعَدْلِ ۗ

Meaning: Verily Allah sends convey the message to those who deserve it, and if you set the law in human both of should you set it to be fair.(An-Nisa verse 58).<sup>57</sup>

When criticized, the above verse contains at least a moral message, including; Allah commands to various carry out kinds of mandates that are entrusted to anyone who has the right accept the mandate, and if mandated to receive a position, then carry out the mandate with justice.

لَا يَتَّخِذِ الْمُؤْمِنُونَ الْكَافِرِينَ أَوْلِيَاءَ مِنْ دُونِ الْمُؤْمِنِينَ ۗ

Meaning: Do not those who believe make disbelievers as leaders, but those who believe. (Ali-Imran verse 28).

<sup>56</sup> Ministry of the Republic of Indonesia, Al-Quran and Translation, (Bandung: Sigma Examedia Arkanleema, 2009), p. 158.

<sup>57</sup> Ministry of the Republic of Indonesia, Al-Quran and Translation, (Bandung: Sigma Examedia Arkanleema, 2009), p. 240.

The responsibilities that humans carry as servants and caliphs have consequences that in the future they will be asked to report their responsibilities for the tasks they carry out. This makes humans by nature a person who must be able to become a leader, at least for him.

Some of verses the Qur'an above explain that Allah claims to have created the earth and made it easy for them, so that they can take advantage of it for them. From the verses mentioned above, at least, there are four moral messages contained in it, namely: Allah SWT prepares and makes it easy for this earth as a suggestion to seek sustenance, Allah commands humans to go to various corners of the earth to manage this earth in search of sustenance, after succeeding in getting sustenance, then enjoy the sustenance as a sign of gratitude to Him and remember that this life is not only for the worldly, but there is an afterlife where humans will be resurrected. This means that Islamic law never limits the domicile of a leader in any field, as long as the person concerned has the requirements to be a leader and has religious observance and loyalty in the work that is his mandate, Islamic law allows.

Likewise, candidates for village apparatus and village heads, in reality, in Pasar Batahan, Batahan District, Mandailing Natal Regency itself, there are already many village officials who are not native to the region. Talking about leadership in general starts from the bottom, from how he behaves to his family, and the household, the smallest unit in



society. Success from below is the key to choosing a leader, not a matter of domicile

## **CHAPTER V**

### **CONCLUSIONS AND SUGGESTIONS**

#### **A. Conclusions**

Based on the research the writer can conclude the results of the research as follows:

1. The implementation of the decision of Constitutional Court of Indonesia No.128/PUU-VIII/2015 on the elimination of domicile requirements for village apparatus candidates has been implemented, where on November 30, 2016 a networking and screening of candidates for village apparatus was carried out, previously candidates from outside the domicile who were not local residents were not accepted by the decision of Constitutional Court, candidates from outside the domicile were accepted and there were candidates for village apparatus who came from outside Pasar Batahan who registers as village officials by taking a written test conducted by the examiner team.
2. In its implementation, the community, especially the Pasar Batahan community, is still very sensitive to this situation and some of the community leaders do not understand and are pleased with the decision and the implementation of the decision of constitutional court of Indonesia on the elimination of domicile requirement for village apparatus candidates actually has several inhibiting factors, namely education, social factors, customs and some who want village apparatus candidates to come from their own villages to maintain and understand village local wisdom and facilitate the community in various affairs. However, they remain obedient

to the decisions that have been set by the Constitutional Court as a reference in the selection of candidates for village officials regardless of domicile status.

3. In Islamic law there is no law that prohibits, selecting candidates from outside any domicile as long as they are not from the infidel group, and having high integrity and capacity in their work, as well as finding a good personal attitude in becoming a leader.

## **B. Suggestions**

As for the message that the author wants to convey through this thesis, namely:

1. For all the people of Pasar Batahan, Batahan District, Mandailing Natal Regency, North Sumatra to open their minds to be able to implementation of the decision of Constitutional Court of Indonesia on the elimination of domicile requirement for village apparatus candidates in full without looking at the domicile background of the candidate for village apparatus.
2. The implementation of the selection of candidates for village apparatus can later be further disseminated to the general public so that the village community in the Batahan District area will make it easier for the community to access information related to the networking and screening of village apparatus candidates carried out by the head man in collaboration with the implementation team and also recommendations from the head of District because this has been protected in the 1945 Law.

3. Village officials are expected to be able to carry out their duties properly and fully with quality capacity so that quality development is able to manage village funds on target.
4. It is expected that the selection of candidates for the village even more from outside the village of origin which has the power of thought and the idea of the rich in order to answer the dynamics of society in the future. But do not forget or override local wisdom.
5. To researchers who contribute in providing education and socialization to the public regarding the implementation of the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the elimination of domicile requirements for village apparatus candidates, because this thesis is far from perfect, so with all humility the writer accepts criticism and input from readers that are constructive for this thesis to be even better.

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## CURRICULUM VITEA



### A. PERSONAL IDENTITY:

1. NAME : JANNES PANDAPOTAN S.H
2. DATE OF BIRTH : PADANGSIDIMPUAN, 03 MARCH 1998
3. RELIGION : MUSLIM
4. GENDER : MALE
5. ADDRESS : PASAR BARU BATAHAN, KEC. BATAHAN  
KAB. MANDAILING NATAL
6. NUMBER PHONE : 0823 6663 5799
7. E-MAIL : jannespandapotan33@gmail.com

### B. EDUCATIONAL BECKGROUND

1. State Elementary School 338 Batahan Mandailing Natal (2005- 2011)
2. State Junior Hight School 1 Batahan, Mandailing Natal (2011- 2014)
3. State Vocational Hight School 1 Rengat, Indragiri Hulu, Riau (2014- 2017)
4. State Institut for Islamic Studies Padangsidimpuan (2017-2021)

## **DAFTAR WAWANCARA**

### **KEPALA DESA**

1. Kapan terakhir pemilihan perangkat desa di desa pasar bataan
2. Apa saja pihak yang terkait dalam pemilihan perangkat desa
3. Apa saja yang menjadi syarat dalam pemilihan perangkat desa
4. Bagaimana sistem pemilihan perangkat desa di desa pasar bataan
5. Apakah ada calon yang di luar domisili (jika ada bagaimana pandangannya)

### **CAMAT**

1. Bagaimana sistem pemilihan perangkat desa di kecamatan bataan terkhusus desa pasar bataan sesuai dengan putusan MK
2. Apa saja faktor kendala bagi pihak kecamatan terkait pelaksanaan putusan MK di dalam masyarakat
3. Apakah dalam pemilihan perangkat desa sebelumnya bapak camat membuka ruang bagi calon di luar domisili
4. Apakah terdapat syarat tambahan bagi calon perangkat desa di luar domisili
5. Apakah pemilihan perangkat desa melihat kapasitas calon

### **Badan Permusyawaratan Desa (BPD)**

1. Bagaimana pelaksanaan pemilihan perangkat desa
2. Bagaimana pelaksanaan putusan MK terkait penghapusan syarat domisili bagi calon perangkat desa
3. Bagaimana pandangan BPD terkait peraturan MK terkait penghapusan syarat domisili dalam artian adanya calon di luar domisili
4. Apakah calon yang akan dipilih dilihat dari kapasitas yang dimiliki

### **Masyarakat Adat dan Masyarakat Sekitar**

1. Bagaimana peran bapak sebagai ketua adat dengan adanya pemilihan/calon perangkat desa yang diperbolehkan dari luar domisili
2. Apakah memilih perangkat desa dilatarbelakangi oleh orang lain atau pilihan sendiri



**DOCUMENTATION**













## LEMBAR PERSETUJUAN MENJADI RESPONDEN

*Assalamualaikum Wr.Wb.*

Dengan Hormat,

Saya yang bertandatangan dibawah ini, Mahasiswa Jurusan **Hukum Tata Negara, Fakultas Syariah dan Ilmu Hukum, Institut Agama Islam Negeri Padangsidempuan:**

NAMA : JANNES PANDAPOTAN

NIM : 17 103 00040

Bermaksud melakukan wawancara dengan judul **“The implementation of the decision of Constitutional Court of Indonesia No. 128/PUU-XIII/2015 on the elimination of domicile requirements for village apparatus candidates in Pasar Batahan Batahan District Mandailing Natal Regency”**. Untuk terlaksananya kegiatan tersebut, Saya mohon kesediaan Bapak/Ibu untuk berpartisipasi dengan cara memberi informasi. Informasi yang Bapak/Ibu berikan akan Saya jamin kerahasiaannya dan hanya akan digunakan untuk kepentingan penelitian. Apabila Bapak/Ibu berkenan memberi informasi, mohon kiranya Bapak/Ibu terlebih dahulu bersedia menandatangani lembar persetujuan menjadi responden (*Informed Consent*).

Demikianlah permohonan Saya, atas perhatian serta kerjasama Bapak/Ibu dalam penelitian ini, Saya ucapkan terimakasih.

*Wassalamualaikum Wr.Wb.*

Batahan, Januari 2021

Pewawancara

Responden (*Informed Consent*)

(JANNES PANDAPOTAN)

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